

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 8 September 2021

Public Authority: The Executive Office for Northern Ireland
Address: Castle Buildings
Stormont Estate
Belfast
BT4 3SR

Decision (including any steps ordered)

1. The complainant has requested information relating to a review of the Charity Commission for Northern Ireland. The Executive Office has only provided a partial response to the request; therefore the Commissioner's decision is that the Executive Office has failed to comply with section 10(1) of FOIA.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Respond to the outstanding parts of the complainant's request, i.e. items 1 and 9. The public authority must either disclose the requested information or, if it wishes to withhold any information, issue a refusal notice in relation to the information it wishes to withhold and disclose the remainder.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

4. The complainant submitted the following request to the Executive Office on 25 October 2020:

- 1) *Please provide a copy of the review completed on the Charity Commission for Northern Ireland by Mr Baume*
- 2) *Please provide details of the tender process completed for this review*
- 3) *Please detail the final cost of the review including details of all payments to any and all parties involved*
- 4) *Please detail each individual person or organisation that was consulted or questioned or contributed to the review*
- 5) *Please detail all correspondence between the parties involved in this review (including, but not limited to, Mr Baume, the Executive Office, the Department for Communities, the Northern Ireland Assembly, any MLA)*
- 6) *Please provide all correspondence which in any way referred to a question on or decision to exclude the Charity Commission and/or its staff from contributing to the report*
- 7) *Please provide the terms of reference for the review*
- 8) *Please provide all documentation pertaining to how Mr Baume assessed the enquiries (or inquiries) conducted by the Charity Commission without contacting them*
- 9) *Please provide a copy of all correspondence to the Minister for the Department for Communities and the Head of the NICS regarding the review*
- 10) *Please provide all documentation relating to the rationale behind the decisions made on which third parties were asked to contribute to the report*
- 11) *Please provide the declaration of interest signed or any details of conflict of interest from all parties involved in this review.*

For all points above where I have mentioned review, please substitute the word review for report or assessment if that is more appropriate.

5. The Executive Office acknowledged receipt of the request on 27 October 2020.
6. The complainant sent reminders to the Executive Office on 5 February 2021 and 26 April 2021. The Executive Office apologised for the delay but did not provide a substantive response to the request.

Scope of the case

7. The complainant contacted the Commissioner on 23 July 2021 to complain that he had not received a response to his request.
8. The Commissioner wrote to the Executive Office on 3 August 2021 to request that it respond to the complainant's request.
9. The Executive Office responded to the Commissioner on 11 August 2021. It apologised for the lack of response and explained that it had not yet been able to consult with the First Minister and deputy First Minister in order to issue a response.
10. Following the Commissioner's intervention the Executive Office wrote to the complainant on 2 September 2021. It confirmed that it held some, but not all, of the requested information. The Executive Office disclosed some of the information it held but advised that it was still unable to issue a substantive response to the remainder of the request, i.e. disclose the requested information or issue a refusal notice. The Executive Office advised the complainant that the remaining requested information may be exempt under section 36 of FOIA (prejudice to the effective conduct of public affairs). It explained that it was unable to provide a date by which a substantive response would be issued.
11. In light of the above the Commissioner considers it appropriate to issue a decision notice regarding the outstanding parts of the request, i.e. items 1 and 9.

Reasons for decision

Section 1: general right of access **Section 10(1): time for compliance**

12. Section 1(1)(a) of FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority, it must be disclosed to the complainant unless a valid refusal notice has been issued.
13. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receipt of the request.

14. In confirming that it holds some information and does not hold the remainder the Executive Office has complied with section 1(1)(a), although it has failed to comply with section 10(1) in this respect because compliance was well outside the statutory 20 working days.
15. However the Executive Office has not issued a substantive response to parts 1 and 9 of the request, nor has it advised the complainant when a response is likely to be issued.
16. The Executive Office has explained to the complainant that it is considering the exemption at section 36 of FOIA. The Commissioner is mindful that this exemption is unique within FOIA in that it cannot be engaged without obtaining an opinion from the "qualified person". In the case of the Executive Office the qualified person may only be the First Minister and deputy First Minister acting jointly. The Commissioner acknowledges that this requirement presents particular challenges for the Executive Office in the current climate.
17. Nonetheless the Commissioner is mindful that FOIA does not allow for a response to be delayed while the qualified person's opinion is sought. The Commissioner therefore finds the Executive Office in breach of section 10(1) of FOIA in respect of parts 1 and 9 of the request.

Right of appeal

18. Although it does not form part of this decision notice the Commissioner considers it appropriate to provide some good practice advice to public authorities who are unable to respond to a request within the statutory time for response.
19. In this case the Executive Office issued a partial response to the complainant ten months after the request was received and only following the Commissioner's intervention. The Commissioner recognises that some parts of a request may be more complex than others, and may take longer to answer.
20. If, exceptionally, a public authority is unable to issue a full response to a request within the statutory time for response, it should provide as full a response as is possible within that time, and explain why the outstanding parts of the request will take longer. For example, the authority may be able to confirm or deny that it holds the requested information within 20 working days, thus avoiding a breach of section 10 in respect of section 1(1)(a) of FOIA. It may also be able to provide some of the requested information. Public authorities should issue a partial response rather than fail to respond at all.

Right of appeal

21. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0203 936 8963
Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
23. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF